

SENATE CS FOR CS FOR HOUSE BILL NO. 149(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/05

Referred: Finance

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto, Kelly, Foster, Holm, Stoltze, Gara, Elkins, Crawford, Meyer, Dahlstrom, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances regarding the crimes of manslaughter and**
2 **misconduct involving a controlled substance; relating to the manufacture of**
3 **methamphetamine and to the sale, possession, and delivery of certain substances and**
4 **precursors used in the manufacture of methamphetamine; relating to listing certain**
5 **anabolic steroids as controlled substances; relating to the listing of property that**
6 **constitutes an illegal drug manufacturing site; amending Rule 41, Alaska Rules of**
7 **Criminal Procedure; and providing for an effective date."**

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** AS 11.41.120(a) is amended to read:

10 (a) A person commits the crime of manslaughter if the person

11 (1) intentionally, knowingly, or recklessly causes the death of another
12 person under circumstances not amounting to murder in the first or second degree;

13 [OR]

(2) intentionally aids another person to commit suicide; or
 (3) knowingly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) for schedule IVA controlled substances, and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state; in this paragraph, "ingestion" means voluntarily or involuntarily taking a substance into the body in any manner.

* Sec. 2. AS 11.71.020(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(3) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomer;

(5) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine or its salts, isomers, or salts of isomers; or

1 **(6) under circumstances not proscribed under AS 11.71.010(a)(2),**
 2 **delivers**

3 **(A) an immediate precursor of methamphetamine, or the**
 4 **salts, isomers, or salts of isomers of the immediate precursor of**
 5 **methamphetamine, to another person with reckless disregard that the**
 6 **precursor will be used to manufacture any material, compound, mixture,**
 7 **or preparation that contains methamphetamine, or its salts, isomers, or**
 8 **salts of isomers; or**

9 **(B) a listed chemical to another person with reckless**
 10 **disregard that the listed chemical will be used to manufacture any**
 11 **material, compound, mixture, or preparation that contains**

12 **(i) methamphetamine, or its salts, isomers, or salts of**
 13 **isomers;**

14 **(ii) an immediate precursor of methamphetamine, or**
 15 **its salts, isomers, or salts of isomers; or**

16 **(iii) methamphetamine or its salts, isomers, or salts**
 17 **of isomers in an organic solution.**

18 * **Sec. 3.** AS 11.71.020 is amended by adding a new subsection to read:

19 (d) In a prosecution under (a) of this section, possession of more than nine
 20 grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the
 21 salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the
 22 person intended to use the listed chemicals to manufacture, to aid or abet another
 23 person to manufacture, or to deliver to another person who intends to manufacture
 24 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers
 25 of methamphetamine or its immediate precursors. The prima facie evidence described
 26 in this subsection does not apply to a person who possesses

27 (1) the listed chemicals ephedrine, pseudoephedrine,
 28 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

29 (A) and the listed chemical was dispensed to the person under a
 30 valid prescription; or

31 (B) in the ordinary course of a legitimate business, or an

employee of a legitimate business, as a

(i) retailer or as a wholesaler;

(ii) wholesale drug distributor licensed by the Board of Pharmacy;

(iii) manufacturer of drug products licensed by the Board of Pharmacy;

(iv) pharmacist licensed by the Board of Pharmacy; or

(v) health care professional licensed by the state; or

(2) less than 24 grams of ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals, kept in a locked storage area on the premises of a legitimate business or nonprofit organization operating a camp, lodge, school, day care center, treatment center, or other organized group activity, and the location or nature of the activity, or the age of the participants, makes it impractical for the participants in the activity to obtain medicinal products.

* **Sec. 4.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under **AS 11.71.020(a)(2) - (6)** [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus.

1 * **Sec. 5.** AS 11.71.180 is amended by adding a new subsection to read:

2 (f) Schedule VA includes, unless specifically excepted or unless listed in
 3 another schedule, any material, compound, mixture, or preparation that contains any
 4 quantity of the following substances, including their salts, esters, isomers, and salts of
 5 esters and isomers if those salts, esters, or isomers promote muscle growth, whenever
 6 the existence of these salts, esters, and isomers is possible within the specific chemical
 7 designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug
 8 or hormonal substance that is chemically and pharmacologically related to testosterone
 9 (other than estrogens, progestins, and corticosteroids) and that promotes muscle
 10 growth; "anabolic steroids" does not include an anabolic steroid that is expressly
 11 intended for administration through implants to cattle or other nonhuman species and
 12 that has been approved by the United States Secretary of Health and Human Services
 13 for that administration, unless a person prescribes, dispenses, or distributes that type of
 14 anabolic steroid for human use; "anabolic steroids" includes the following:

- 15 (1) boldenone;
- 16 (2) chlorotestosterone (4-chlorotestosterone);
- 17 (3) clostebol;
- 18 (4) dehydrochlormethyltestosterone;
- 19 (5) dihydrotestosterone (4-dihydrotestosterone);
- 20 (6) drostanolone;
- 21 (7) ethylestrenol;
- 22 (8) fluoxymesterone;
- 23 (9) formebulone (formebolone);
- 24 (10) mesterolone;
- 25 (11) methandienone;
- 26 (12) methandranone;
- 27 (13) methandriol;
- 28 (14) methandrostenolone;
- 29 (15) methenolone;
- 30 (16) methyltestosterone;
- 31 (17) mibolerone;

- (18) nandrolone;
- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;
- (26) testosterone;
- (27) trenbolone.

* **Sec. 6.** AS 11.71 is amended by adding a new section to article 2 to read:

Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed chemicals. (a) A person commits the crime of purchase or receipt of restricted amounts of certain listed chemicals if the person purchases or receives more than nine grams of the following listed chemical, its salts, isomers, or salts of isomers within any 30-day period:

- (1) ephedrine under AS 11.71.200(4);
- (2) pseudoephedrine under AS 11.71.200(13);
- (3) phenylpropanolamine under AS 11.71.200(11).

(b) This section does not apply to a person who lawfully purchases or receives more than nine grams of a listed chemical identified in (a) of this section

- (1) that was dispensed to the person under a valid prescription; or
- (2) in the ordinary course of a legitimate business, or to an employee of a legitimate business, as a
 - (A) retailer or as a wholesaler;
 - (B) wholesale drug distributor licensed by the Board of Pharmacy;
 - (C) manufacturer of drug products licensed by the Board of Pharmacy;
 - (D) pharmacist licensed by the Board of Pharmacy; or
 - (E) a health care professional licensed by the state.

(c) Purchase or receipt of restricted amounts of certain listed chemicals is a class C felony.

* **Sec. 7.** AS 12.30.023 is amended by adding a new subsection to read:

(b) In addition to conditions the court may impose under (a) of this section and notwithstanding other provisions in this chapter, if the defendant is charged with manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant proves to the satisfaction of the court that the defendant's only role in the offense was as an aider or abettor and that the defendant did not stand to benefit financially from the manufacturing, the court shall require the posting of a minimum of \$250,000 cash bond if the defendant has previously been convicted in this or another jurisdiction of manufacturing, delivering, or possessing methamphetamine.

* **Sec. 8.** AS 12.55.125(c), as amended by ch. 2, sec. 8, SLA 2005, is amended to read:

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years,
if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or

temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 to 20 years.

* **Sec. 9.** AS 12.55.125(d), as amended by ch. 2, sec. 9, SLA 2005, is amended to read:

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for an attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent

or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, four to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

* **Sec. 10.** AS 12.55.185 is amended by adding a new paragraph to read:

(1) "building," in addition to its usual meaning, includes any propelled vehicle or structure adopted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a part of the same building.

* **Sec. 11.** AS 17.30 is amended by adding a new section to article 1 to read:

Sec. 17.30.090. Dispensation of and registration and record requirements for certain listed chemicals. (a) A wholesaler, manufacturer, or distributor of products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete records of all transactions involving those products, including the names of all parties involved in the transaction, the date of the transaction, and the amount of the drug products involved. The records shall be kept readily retrievable for inspection by law enforcement officers and separate from all other invoices or records of transactions not involving those products and shall be maintained for one year, or a shorter period of time established by the Department of Public Safety by regulation, and must allow for inspection of the records by law enforcement officers.

(b) A retailer of a product or substance that contains (1) as the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, (2) iodine, or crystal iodine, or (3) ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers and any other ingredient when required by the Department of Public Safety by regulation due to the product's potential for diversion to the manufacture of methamphetamine, its immediate

1 precursors, or the salts, isomers, or salts of isomers of methamphetamine or its
2 immediate precursors, may not sell or dispense the product or substance unless the
3 retailer confirms the identity of the purchaser by valid government-issued photo
4 identification, and the retailer completes a written log listing information required by
5 the Department of Public Safety by regulation. The log shall be maintained for one
6 year or a shorter period of time established by the Department of Public Safety by
7 regulation. The Department of Public Safety and other law enforcement officers shall
8 have access to the log.

9 (c) A person may not offer to sell a product or substance that contains (1) as
10 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
11 their salts, isomers, or salts of isomers, (2) iodine, or crystal iodine, or (3) ephedrine,
12 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers and
13 any other ingredient when required by the Department of Public Safety by regulation
14 due to the product's potential for diversion to the manufacture of methamphetamine,
15 its immediate precursors, or the salts, isomers, or salts of isomers of methamphetamine
16 or its immediate precursors unless that product or substance is displayed behind a
17 service counter and not accessible to the public or is kept in a secured cabinet or
18 storage area that may only be accessed by the seller.

19 (d) Nothing in this section limits the authority of a person regulated by this
20 section to report to a law enforcement agency or officer suspicious purchases of a
21 chemical, product, or substance.

22 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
23 requiring wholesalers, manufacturers, and distributors to report the information
24 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
25 shall regularly report that information to the municipal police department at intervals
26 required in the ordinance.

27 (f) Upon the written request of any law enforcement agency, any wholesaler,
28 manufacturer, distributor, or a retailer shall report electronically or by mail the
29 information collected in (a) or (b) of this section for the six month period following
30 the written request.

31 (g) The log required to be maintained by a retailer under (b) of this section and

1 the information entered into the log is confidential. The retailer may not allow access
 2 to the log or release information contained within the log except to the Department of
 3 Public Safety or other law enforcement officers. A retailer is not liable in a civil
 4 action for release of information contained in the log in violation of the confidentiality
 5 requirements of this section unless the retailer intentionally released the information or
 6 was aware at the time of the release that the information was being released in
 7 violation of this section.

8 (h) A person has a duty to exercise that degree of care that a reasonable person
 9 would observe to ensure that the requirements of (b) and (c) of this section are
 10 complied with. This duty of the person includes ensuring the compliance by agents or
 11 employees with this section, including acting with reasonable diligence to determine
 12 that agents or employees are advised of the provisions of this section, either by
 13 securing the agent's or employee's written acknowledgment of posted instructions or
 14 otherwise. A person may neither knowingly allow agents or employees to violate this
 15 section nor recklessly or with criminal negligence fail to act in accordance with the
 16 duty prescribed under this subsection with the result that an agent or employee of the
 17 licensee violates a provision of this section.

18 (i) It is an affirmative defense to a prosecution of a person that the person
 19 exercised that degree of care specified in (h) of this section and did not knowingly
 20 allow a violation of this section or recklessly or with criminal negligence fail to act as
 21 required by this section.

22 (j) A person who knowingly violates (a), (b), or (c) of this section is guilty of a
 23 class A misdemeanor, punishable upon conviction only by a fine in an amount not to
 24 exceed \$10,000. A wholesaler, manufacturer, or distributor that knowingly fails to
 25 report as required by (e) of this section is guilty of a violation. A retailer who
 26 knowingly violates (g) of this section is guilty of a violation.

27 (k) In this section,

28 (1) "criminal negligence" has the meaning given in AS 11.81.900(a);

29 (2) "distributor" means a person in the state or another state, other than
 30 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
 31 a drug product described in (a) of this section to a person who is not the ultimate user

1 or consumer of the product;

2 (3) "knowingly" has the meaning given in AS 11.81.900(a);

3 (4) "manufacturer" means a person in the state who produces,
4 compounds, packages, or in any manner initially prepares for sale or use a drug
5 product described in (a) of this section, or a person in another state if the person causes
6 the products to be compounded in, packaged in, or transported to this state;

7 (5) "readily retrievable" means available for inspection without prior
8 notice at the registration address if that address is in the state; if the registration
9 address is outside the state, "readily retrievable" means records must be furnished
10 within three working days by courier, facsimile, mail, or electronic mail;

11 (6) "recklessly" has the meaning given in AS 11.81.900(a);

12 (7) "wholesaler" means a person in the state or another state, other than
13 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
14 described in (a) of this section to another person in the state for the purpose of the drug
15 product's being resold.

16 * **Sec. 12.** AS 46.03.500 is amended by adding a new subsection to read:

17 (f) The department shall maintain on its Internet website a list of all properties
18 for which a notice has been issued under (a) of this section. For each of those
19 properties, the list must contain the parcel identification number, legal description, and
20 physical address and owner's name at the time the notice was issued.

21 * **Sec. 13.** AS 46.03.550(b) is amended to read:

22 (b) The department shall maintain a list of properties for which the department
23 has received notice under AS 46.03.500(c). When the department determines under (a)
24 of this section that a property on the list is fit for use, the department shall **note on the**
25 **list maintained on its Internet website under AS 46.03.500(f), and on any other**
26 **list or database it maintains related to illegal drug manufacturing sites, that the**
27 **property is fit for use** [REMOVE THE PROPERTY FROM THE LIST] and **shall**
28 **notify the owner of the property that the property is fit for use. The property shall**
29 **remain on the lists or databases for five years after it is determined that the**
30 **property is fit for use and shall be removed from the lists or databases within**
31 **three months after the five year period has elapsed.** On request, the department

1 shall give a copy of the list maintained under this section to any person who requests
2 the list.

3 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 INDIRECT COURT RULE AMENDMENT. Section 7 of this Act has the effect of
6 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of
7 bond that can be posted to secure the pretrial release of certain defendants charged with
8 manufacturing methamphetamine under AS 11.71.020(a)(2).

9 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. Sections 1 - 11 and 14 of this Act apply to offenses committed on
12 or after the effective date of this Act.

13 * **Sec. 16.** AS 17.30.090(b) is repealed.

14 * **Sec. 17.** Sections 1 - 15 of this Act take effect July 1, 2005.

15 * **Sec. 18.** Section 16 of this Act takes effect June 30, 2007.